

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REGULATION BY LITIGATION

Mr. MCCONNELL. Mr. President, I rise to speak in support of the class action bill that will be before the Senate later this morning.

A few years ago during the debate on lawsuits against tobacco companies, gun manufacturers, and lead paint companies, the satirical publication, the Onion, wrote a spoof piece entitled "Hershey's Ordered to Pay Obese Americans \$135 billion." This was a tongue-in-cheek article which everyone found quite amusing at that time.

It began:

In one of the largest product-liability rulings in U.S. history, the Hershey Foods Corporation was ordered by a Pennsylvania jury to pay \$135 billion in restitution to 900,000 obese Americans who for years consumed the company's fattening snack foods.

The spoof went on:

"Let this verdict send a clear message to 'Big Chocolate,'" said Pennsylvania[s] Attorney General . . . addressing reporters following the historic ruling. "If you knowingly sell products that cause obesity, you will pay."

The article continued:

The five-state class action suit accused Hershey's of "knowingly and willfully marketing rich, fatty candy bars containing chocolate and other ingredients of negligible nutritional value." The company was also charged with publishing nutritional information only under pressure from the government, marketing products to children, and artificially "spiking" their products with such substances as peanuts, crisped rice, and caramel to increase consumer appeal.

The article went on to discuss the use of class action litigation to force chocolate manufacturers to adopt policies preferred by the plaintiffs.

It concluded by saying:

Whatever the outcome of Hershey's appeal, the chocolate industry has been irrevocably changed as a result of [the] verdict.

When I read this piece in the Onion a few years ago, I thought it was quite creative. I thought it illustrated the disturbing misuse of class actions, using class actions to circumvent legislative decisions with respect to setting policy. I was not the only one who thought so. Former Secretary of Labor under President Clinton, Robert Reich, wrote that:

The era of big government may be over, but the era of regulation through litigation has just begun.

It turns out that the Onion was not merely creative, it was, in fact, prescient. A few months ago, I read another article, this one a real news story, not a spoof, entitled "Ailing Man Sues Fast Food Firms." The article began:

Want a class action lawsuit with that burger?

It reports that a lawyer "has filed suit against the four big fast-food corporations, saying their fatty foods are responsible for his client's obesity and health-related problems."

The lawyer filed his lawsuit in State court in the Bronx, "alleging that McDonald's, Burger King, Wendy's and [Louisville-based] KFC Corporation are irresponsible and deceptive in the posting of their nutritional information, that they need to offer other options on their menus, and that they created a de facto addiction in their consumers, particularly the poor and children."

The lawyer said:

You don't need nicotine or an illegal drug to create an addiction, you're creating a craving.

The lead plaintiff, a 56-year-old maintenance supervisor, said he "traced it all back to high fat, grease and salt, all back to McDonald's, Wendy's, Burger King." He said:

There was no fast food I didn't eat, and I ate it more often than not because I was single, it was quick, and I'm not a very good cook. It was a necessity, and I think it was killing me, my doctor said it was killing me, and I don't want to die.

The attorney "aimed to make his case into a class action lawsuit," with the ultimate goal "to force the fast-food industry 'to offer a larger variety to the consumers, including non-meat vegetarian, less grams of fat, and a reduction'" in meal size.

Mr. President, by the way, damages in the case were unspecified. Given the horror stories we have heard of plaintiffs getting the short end of the stick in class action cases, the plaintiffs better hope that class action reform gets enacted before their case is resolved, lest their lawyer bank all the cash while they are stuck with a coupon as a result of a "drive-by"—or should I say "drive-through"—settlement. The coupon could probably buy a large french fry. That would be about all it would purchase.

A disturbing thing about lawsuits against "big fast food" is that they promote a culture of victimhood and jettison the principle of personal responsibility. I have, in fact, introduced the Commonsense Consumption Act to try to restore sanity to our legal system with respect to these types of cases against the fast food industry.

But an equally disturbing aspect that this high profile case illustrates is the use of class action lawsuits to circumvent legislative decisions and subvert the democratic process. No branch of Government should mandate that Burger King and McDonald's carry veggie burgers for portly patrons. But even if that is something Government should do, it should not be the judicial branch that does it, particularly a State court setting national culinary policy.

Let me give another example with which people might not be as familiar.

A national class action lawsuit certified in an Illinois county court has resulted in a determination that car insurance companies violated their contracts by refusing to provide original manufactured parts to policyholders who were involved in accidents. This determination resulted in a \$1.8 billion verdict against State Farm.

This case is noteworthy because the county court which certified the class action let the case stand, even though several State insurance commissioners testified that a ruling in favor of the nationwide case would actually contravene the laws of other States. These laws either allowed, or in fact required, the use of generic car parts as a way to keep costs down for consumers.

As the New York Times reported, the result of this State class action was to "overturn insurance regulations or State laws in New York, Massachusetts, and Hawaii, among other places," and "to make what amounts to a national rule on insurance."

The concerns with this case were not due to the interests of "big insurance." Ralph Nader's group, Public Citizen, the attorneys general of New York, Massachusetts, Pennsylvania, and Nevada, and the National Association of Insurance Commissioners all filed briefs opposing the Illinois State court's determination because this county court's new national rule on insurance would be bad for consumers—though I suspect the trial lawyers in that case have made out quite handsomely.

It is not only appropriate, but necessary, to use class actions to efficiently provide remedies to large numbers of plaintiffs. But it is inappropriate to use them to circumvent the decisions that belong to other branches of Government and to other States. Maybe Ralph Nader, New York, Massachusetts, Pennsylvania, and other States are wrong and the county judge in Illinois is right, and we should require that original manufacturer parts be used in auto repairs. But that is a decision for the people of the several States to make, not unelected judges.

Mr. President, class action reform will ensure that truly national cases are decided in a national forum, and I hope we can enact this important reform. The Democrat leadership has said their caucus recognizes the need for reform. I think the fact that they are filibustering the motion to proceed questions that notion.

But we will soon have a chance to see if our friends on the other side of the aisle are sincere about trying to solve the problem of class action litigation. If they are serious, then they should support cloture on the motion to proceed and give us a chance to go forward with this important legislation. If we get on the bill, then they can try to improve the flaws they see in it, or maybe even substitute an entirely new proposal, which I understand one of the Democratic Senators advocates. But if

we cannot even get on the bill, we cannot attempt to solve whatever problems they think might be in the bill.

I am hopeful that we won't have the situation we had a few months ago, where folks on the other side claimed to want to do something about the problems with our medical liability system, but then, to a man, filibustered the motion to proceed on medical liability reform. We will soon see if our friends on the other side of the aisle are sincerely interested in moving forward on this legislation.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2003—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 having arrived, the Senate will resume consideration of the motion to proceed to the consideration of S. 1751, with the time until 12:30 p.m. equally divided between the two leaders or their designees. The clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of S. 1751, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I ask unanimous consent that the 5 additional minutes of morning business just consumed by the distinguished assistant majority leader be charged against the Republican time for debate on the motion to proceed to S. 1751.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. Mr. President, in a moment, I am going to ask that the Chair recognize the distinguished Senator from Nevada for comments that he may care to make on the motion to proceed and on the upcoming vote at 12:30 on cloture regarding that issue. I want to perhaps tee it up a little bit and talk about why I think this motion to proceed is so important. I am only going to do so for a few minutes, and I will talk some more after the Senator from Nevada has had a chance to speak, and perhaps someone on the other side who wishes to speak.

I worry that our system of litigation has simply become too expensive and too time-consuming to serve the needs of consumers and the public. Those of us who have represented people in court, whether they be a plaintiff or a defendant in a lawsuit, know that sometimes after the lawsuit is over, even though lawsuits invariably have winners and losers, sometimes it is hard to tell the difference between the two because the process, as I say, costs so much and takes so much time.

Unfortunately, because of that, a lot of people with valid claims, who have been dealt an injustice and should have access to our courts or some means to vindicate those claims, are simply frozen out. That is something we need to work on not just on this bill, on this day, but going forward. I hope we will.

This bill, I believe, is very important because, indeed, I think the purpose of a class action lawsuit is a good one. It does, as originally intended, serve the purpose of providing individuals with relatively small claims an opportunity to get access to the court to get justice, even though it may not be economically sustainable because, of course, they have to hire a lawyer, pay court costs, and all the like.

The purpose, I believe, is laudable, but as in a lot of areas, experience and scholarship by the Nation's leading thinkers and just plain common sense tell us that, with the circumstances that confront us today when it comes to class action lawsuits, the system is not just broken but that it is falling completely apart.

Mr. President, I reserve any remaining comments that I may have and, according to the time that has been split between the parties on this issue, recognize the Senator from Nevada for comments he may care to make at this time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the Chair. Mr. President, I do not want to interfere with my friend from Nevada, but I understood we were going back and forth; is that correct?

Mr. CORNYN. That is certainly fine.

The PRESIDING OFFICER. There is no agreement to that effect.

Mr. LEAHY. Has there been time reserved under the order for the Senator from Vermont?

The PRESIDING OFFICER. There is time reserved.

Mr. CORNYN. Mr. President, if I may inquire of my colleague from Vermont, Senator ENSIGN was here when I started, and then Senator LEAHY came in after I started, so I apologize. May I inquire approximately how long the Senator from Vermont wishes to speak?

Mr. LEAHY. Mr. President, how much time is reserved under the order for the Senator from Vermont?

The PRESIDING OFFICER. About 30 minutes.

Mr. LEAHY. I will not use the 30 minutes. I am going to use approximately 5 minutes of my 30 minutes.

Mr. CORNYN. I certainly ask that the Senator from Vermont be recognized for that purpose.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair. Mr. President, I do take my time under the order.

As I stated before, I do oppose this bill, a bill that has not had hearings, has not had a vote in the committee, but when you review it, you realize—let me be parochial for a moment—this

legislation would deprive Vermonters of the right to band together to protect themselves against violations of State civil rights, consumer, health, and environmental protection laws in their own State courts.

That is unacceptable to this Vermonter. The same could be said of all the other 49 States, and it ought to be unacceptable to the Senators from each of the other 49 States.

In fact, the country might ask what it says about our priorities that we are even having this debate. Of the many pressing issues already on the Senate's plate awaiting action and awaiting time on the floor, all the appropriations bills that we are required by law to pass by September 30 and have yet to even be taken up for a vote or debate should be among our highest priorities. If we are going to tell how the laws should be made and how the courts should be run, we ought to at least demonstrate to the American people that we, in the Senate, can follow the law and do our appropriations bills at the time we are supposed to.

Instead, we set aside those issues that by law we are required to do, those issues that are the priorities of the American people, to take up another priority. We ask: Whose priority is this bill? The bill is a top priority to special interests that include big polluters and big violators of the American people's consumer rights and civil rights past, present, and future.

Class actions are one remaining tool available to the average American in seeking justice, and some special interests want nothing more than to weaken the public's hand in class action proceedings.

While the Senate is spending several days debating this bill, think of those appropriations bills that by law we should have brought up weeks ago and what is in those bills: not special interests but American interests, such as funding for the Department of Justice to provide bulletproof vests for law enforcement officers, the same law enforcement officers who protect all of us, or how about the money to put more cops on the streets and to implement the prevention programs of the Violence Against Women Act? Those are not special interests; they are American interests.

Despite the fact the fiscal year began 3 weeks ago, we are dallying with this special interest legislation that benefits large corporate interests at the expense of individuals harmed by these corporations.

At its core, this bill deprives citizens of the right to sue on State law claims in their own State courts if the principal defendant is a citizen of another State, even if that defendant has a substantial presence in the plaintiffs' home State, and even if the harm done was in the plaintiffs' home State.

Less than a week ago, with no hearings before our committee, mass tort actions were included in the bill along with true class actions, despite the fact